

ORIGINAL

FILED

October 19 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. **DA 09-0510**

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

**STATE OF MONTANA, EX REL.
DEPARTMENT OF
ENVIRONMENTAL QUALITY,**

Plaintiff/Appellant,

vs.

BNSF RAILWAY COMPANY,

Defendant/Appellee/Cross Appellant.

**SWANK ENTERPRISES'
NOTICE OF APPEAL**

NOTICE is given that SWANK ENTERPRISES, the Appellant
above-named and who is a Defendant in that cause of action filed in the First
Judicial District, in and for the County of Lewis and Clark, as Cause No. BDV-

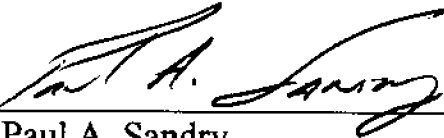
2004-596, hereby appeals to the Supreme Court of the State of Montana from the final judgment or order entered in such action on the 10th day of February, 2009.

THE APPELLANT FURTHER CERTIFIES:

1. That this appeal is not subject to the mediation process required by M. R. App. P. 7.
2. That this appeal is not an appeal from an order certified as final under M. R. Civ. P. 54(b).
3. That the notice required by M. R. App. P. 27 is not applicable in this appeal.
4. That all available transcripts of the proceedings in this cause have been ordered from the court reporter by other parties hereto. If all available transcripts have not been ordered, that Appellant has complied with the provisions of M.R.App.P. 8(3) contemporaneously with the filing of this notice of appeal.
5. That included herewith is the filing fee prescribed by statute, or the affidavit to proceed without payment of the required filing fee prescribed in the Appendix of Forms as Form 3.

Dated this 10th day of October, 2009.

JOHNSON, BERG, MCEVOY & BOSTOCK, PLLP

By 
Paul A. Sandry
Attorneys for Appellant Swank Enterprises
PO Box 3038
Kalispell, Montana 59903-3038

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2009 I filed a true and accurate copy of the foregoing NOTICE OF APPEAL with the Clerk of the Montana Supreme Court; and that I served true and accurate copies of the foregoing NOTICE OF APPEAL upon the Clerk of the District Court, each attorney of record, and each party not represented by an attorney in the above-referenced District Court action, by depositing same in the US Mail, postage prepaid, to wit:

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